



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NO PROTEST RECEIVED
Release to Manager, EO Determinations - Standard

DATE: [REDACTED]

SURNAME [REDACTED]

Date: JAN 17 2003

Contact Person: [REDACTED]

Identification Number: [REDACTED]

Contact Number: [REDACTED]

Employer Identification Number: [REDACTED]

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

Facts:

You were created under [REDACTED] of the Laws of [REDACTED] under the name [REDACTED]. In [REDACTED] the [REDACTED] legislature enacted House [REDACTED], which became law without the Governor's approval on [REDACTED] as [REDACTED] Laws of [REDACTED] amended [REDACTED] by changing your name to [REDACTED] revising the purposes for which you are formed, and amending and restating other provisions.

[REDACTED] provides:

There is hereby created a special taxing fire protection and rescue service district incorporating lands in [REDACTED] described in subsection (1) which shall be a public corporation having the powers, duties, obligations, and immunities herein set forth, under the name of the [REDACTED]

Subsection (2) of section 2 provides:

The purpose of this act is to promote the health, welfare, and safety of the citizens and residents of [REDACTED] who reside within the geographical limits of that area known as the [REDACTED] by providing for the financial support of the [REDACTED] of [REDACTED] a [REDACTED] not-for-profit

[REDACTED]

corporation, which currently provides the district with fire protection services, facilities, and equipment; the establishment and maintenance of fire stations and fire substations, the acquisition and maintenance of all firefighting and protection equipment necessary for the prevention of fires or fighting of fires; the employment and training of such personnel as may be necessary to accomplish fire prevention and firefighting; the establishment and maintenance of emergency service; the acquisition and maintenance of rescue and other emergency equipment; and the employment and training of necessary emergency personnel. The district shall have all other powers necessary to carry out the purposes of the district as otherwise provided by law, including, but not limited to, the power to adopt all necessary measures, rules, and regulations and policies relating to said purposes.

[REDACTED] provides:

The business and affairs of the district shall be governed and administered by a board of five commissioners, who shall be qualified electors residing within the district, and shall be elected by the qualified electors residing within the district at a special election which shall be held in conjunction with the general election in [REDACTED] and shall serve a term of four years each....

[REDACTED] provides:

The board shall have the right, power, and authority to levy special taxes as an assessment against the taxable real estate within the district to provide funds for the purposes of the district.

[REDACTED] provides:

The taxes levied and assessed by the district shall be a lien upon the land so assessed along with the county taxes assessed against such land until said assessments and taxes have been paid, and if the taxes levied by the district become delinquent, such taxes shall be considered a part of the county tax subject to the same penalties, charges, fees, and remedies for enforcement and collection and shall be enforced and collected as provided by general law for the collection of such taxes.

[REDACTED] provides:

The board of commissioners shall have the right and power to enact fire prevention ordinances ... and when the provisions of such fire prevention ordinances are determined by the board to be violated, the office of the state attorney ... is authorized to prosecute such person or

[REDACTED]

persons held to be in violation thereof.

The board shall have the power to appoint a fire marshal.... The district fire marshal shall be authorized to enter ... any building or premises for the purpose of making an inspection or investigation which the State Fire Marshal is authorized to make pursuant to state law and regulation. The owner, lessee, manager, or operator of any building or premises shall permit the district fire marshal to enter and inspect the building or premises at all reasonable hours. The district fire marshal shall report any violations of state fire safety law or regulations to the appropriate officials.

[REDACTED] provides:

The district shall exist until dissolved in the same manner as it was created.

[REDACTED] provides:

The district and its officers, agents, and employees shall have the same immunity from tort liability as other agencies and subdivisions of the state.

In your letter of [REDACTED], you state that "House Bill 90-425 is the enabling document, however, we are also under [REDACTED] for all special districts." [REDACTED] contains the provisions of the [REDACTED] [REDACTED] provides that the term "Independent special fire control district" means an independent special district as defined in [REDACTED] created by special law or general law of local application, providing fire suppression and related activities within the jurisdictional boundaries of the district."

[REDACTED] provides that the term "special district" means a local unit of special purpose, as opposed to general purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.

[REDACTED] provides that the district shall have, and the board may exercise, various powers. [REDACTED] provides for the exercise of the right and power of eminent domain over any property within the district for the uses and purposes of the district relating solely to the establishment and maintenance of fire stations and fire substations, specifically including the power to take easements that serve such facilities. [REDACTED] provides that the district shall have the power to assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by the act. [REDACTED] provides that the district shall have the power to impose and foreclose non-ad valorem assessment liens as provided by the act, or to impose, collect, and enforce non-ad valorem assessments pursuant to [REDACTED]

██████████ provides that the board shall have and may exercise any or all of various special powers. ██████████ provides that the board shall have the power to adopt and enforce firesafety standards and codes and enforce the rules of the State Fire Marshal consistent with the exercise of the duties authorized by ██████████ or ██████████ with respect to fire suppression, prevention, and firesafety code enforcement. ██████████ provides that the board shall have the power to conduct arson investigations and cause-and-origin investigations.

Law:

Section 501(a) of the Code exempts from federal income taxation organizations described under section 501(c).

Section 501(c)(3) of the Code describes corporations, trusts, and associations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization as defined in subchapter (2) of this paragraph: (a) limit the purposes of such organization to one or more exempt purposes; and (b) do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes. In no case shall an organization be considered to be organized exclusively for one or more exempt purposes if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(2) of the regulations provides that the term "articles of organization" includes the trust instrument, corporate charter, the articles of association, or any other written instrument by which an organization is created.

Section 1.501(c)(3)-1(b)(4) of the regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a state or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or to shareholders.

Rev. Rul. 59-373, 1959-2 C.B. 3, considers whether soil conservation districts created under the laws of the State of Colorado constitute political subdivisions of the State within the meaning of section 103 of the Code. The law provides that a district be governed by a board of

five supervisors, two of whom are appointed by the state board and three of whom are elected in the district election. A district is authorized to acquire and dispose of real or personal property, to accept grants and borrow money from the United States, or from the State of Colorado, or from any other source. A district is authorized to adopt land use ordinances and to levy taxes and to make assessments upon tracts of land to be benefited by such ordinances. The statute provides that such taxes or assessments shall be added to all other taxes levied or assessed against such land and shall be collected as are other property taxes. The ruling holds that the soil conservation districts created under the laws of the State of Colorado constitute political subdivisions of the State within the meaning of section 103 of the Code. Therefore, interest on obligations issued by such districts is excludable from gross income of recipients thereof in computing their federal income tax liabilities.

Rev. Rul. 60-384, 1960-2 C.B. 172, holds that a wholly-owned state or municipal instrumentality which is a separate entity and which is organized and operated exclusively for purposes described in section 501(c)(3) of the Code may qualify for exemption from federal income tax under section 501(a) as an organization described in section 501(c)(3). A state or municipality itself would not qualify as an organization described in section 501(c)(3) since its purposes are not exclusively those described in section 501(c)(3) of the Code. Therefore, where a particular branch or department under whose jurisdiction the activity in question is being conducted is an integral part of a state or municipal government, the provisions of section 501(c)(3) would not be applicable. On the other hand, a wholly-owned state or municipal instrumentality which is a counterpart of an organization described in section 501(c)(3) of the Code, such as a separately organized school, college, university, or hospital, may qualify for exemption under section 501(c)(3) of the Code. If the organization conducting the activity, although a separate entity, is clothed with powers other than those described in section 501(c)(3), it would not be a clear counterpart of a section 501(c)(3) organization. For example, where a wholly owned state or municipal instrumentality exercises enforcement or regulatory powers in the public interest such as health, welfare or safety, it would not be a clear counterpart of an organization described in section 501(c)(3) of the Code even though separately organized since it has purposes or powers which are beyond those described in section 501(c)(3).

Rev. Rul. 74-14, 1974-1 C.B. 125, describes a public housing authority incorporated under a state statute and organized to undertake the clearance, replanning, and reconstruction of areas in which unsanitary or unsafe housing conditions exist and to provide safe and sanitary dwelling accommodations for low income families in a particular municipality. It is incorporated under a state statute conferring upon it the power to conduct examinations and investigations, to hear testimony and take proof under oath at public or private hearings, to administer oaths, and to issue subpoenas requiring the attendance of witnesses or the production of books and papers. The ruling holds that, although the housing authority is a separate entity, its investigatory powers are to be exercised for the purpose of collecting information and making it available to appropriate agencies for use in furthering and enforcing local ordinances regarding planning, building, and zoning matters. Such powers are regulatory or enforcement powers of the kind referred to in Rev. Rul. 60-384. Therefore, this organization would not be a clear counterpart of an organization described in section 501(c)(3) of the Code. Accordingly, the organization does not qualify for exemption under section 501(c)(3) of the Code.

Rev. Rul. 74-15, 1974-1 C.B. 126, describes a corporation organized under a state statute to maintain a public library for the people of a particular county. The statute confers upon the library board, its governing body, a limited power to determine the tax rate necessary to support its operations within specified maximum and minimum rates. The effect of the statute is not to grant the library board the power to impose or levy taxes. Instead, the board submits the tax rate so determined to the county auditor who certifies the tax rate to the county adjustment board, in the same manner as other tax rates are certified. All of these taxes are collected by the county treasurer who transmits to the library its share of revenue. The ruling finds that, although the library is wholly-owned by a political subdivision of a State, it is a separate entity and is otherwise a counterpart of an organization exempt under section 501(c)(3). The ruling holds that the power regarding the tax rate is not a regulatory or enforcement power within the meaning of Rev. Rul. 60-384 since it merely involves the determination, subject to specified limits, of a tax rate necessary to support the library's operation. Therefore, this organization is not considered to be clothed with a power beyond those of an organization described in section 501(c)(3). Accordingly, the organization qualifies for exemption under section 501(c)(3) of the Code.

Analysis:

Your enabling document, [REDACTED] Laws of [REDACTED] which operates as your "articles of organization" for purposes of the organizational test under section 1.501(c)(3)-1(b) of the regulations, makes no provision for the disposition of your assets upon your dissolution. Therefore, your assets are not dedicated to an exempt purpose within the meaning of section 1.501(c)(3)-1(b)(4) of the regulations, and you are not considered to be organized exclusively for one or more exempt purposes.

Under [REDACTED] law, you are authorized to levy and collect ad valorem taxes and non-ad valorem assessments upon real property in the district. Furthermore, you are authorized to adopt and enforce firesafety standards and codes and to conduct arson investigations and cause-of-origin investigations for the purpose of collecting information and making it available to appropriate agencies for use in enforcing laws and ordinances.

Rev. Rul. 60-384 provides that a state or municipal instrumentality is not entitled to exemption under section 501(c)(3) of the Code if it exercises substantial regulatory or enforcement powers in the public interest. Your powers to adopt and enforce firesafety standards and codes and to conduct arson and cause-of-origin investigations are similar to the investigatory powers of the housing authority described in Rev. Rul. 74-14. As noted in that ruling, such powers are enforcement and regulatory powers within the meaning of Rev. Rul. 60-384.

Unlike the organization described in Rev. Rul. 74-15—a library which held a limited power to determine and certify a tax rate necessary to fund its operations—you have the authority not only to levy taxes and other assessments, but to collect them as well. The power to collect taxes is a regulatory and enforcement power within the meaning of Rev. Rul. 60-384, and is not among the purposes described in section 501(c)(3) of the Code.

[REDACTED]

You are a "special taxing district" and a "local unit of special purpose government" under state law with the same immunities as other agencies and subdivisions of the state. You are similar to the soil conservation districts described in Rev. Rul. 59-373 that were determined to constitute political subdivisions of the State for purposes of section 103 of the Code. As a political subdivision, your purposes are clearly not exclusively those described in section 501(c)(3) under the reasoning of Rev. Rul. 60-384.

Conclusion:

Because you are organized for purposes that are broader than the purposes specified in section 501(c)(3) of the Code you do not meet the organizational test under section 1.501(c)(3)-1(b) of the regulations.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views to this office, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7426(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling 1-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

[REDACTED]

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service
TE/GE (T:EO:RA:T:2)
[REDACTED]
1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

(signed) Terrell M. Berkovsky

Terrell M. Berkovsky
Manager, Exempt Organizations
Technical Group 2

[REDACTED] [REDACTED]